

## BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: April 19, 2006

Division: Engineering

Bulk Item: Yes     X     No           

Department: Facilities Development

Staff Contact Person: Jerry Barnett

**AGENDA ITEM WORDING:** Approval to award bid and enter into a contract with Charley Toppino and Sons, Inc. for the construction of a new Big Coppitt Key Park, and the demolition of the Big Pine Key Park on the Old Mariner's property.

**ITEM BACKGROUND:** On March 23, 2006 a bid opening was held for the construction of the Big Coppitt Key Park, with the demolition of the Big Pine Key Park as an add alternate to the bid. Two bidders responded with Charley Toppino & Sons submitting the lower of the two bids for the project and the alternate. Charley Toppino & Sons omitted background information and references requested on their bid, however they have many years experience with Monroe County and their low bid is \$92,544.75 lower than the second low bidder. The Board of County Commissioners reserves the right to reject any and all bids, to waive informalities in any or all bids; and to separately accept or reject any item or items of bid and to award and/or negotiate in the best interest of the County.

**PREVIOUS RELEVANT BOCC ACTION:** This project is included in the County's Capital Improvements Plan.

**CONTRACT/AGREEMENT CHANGES: N/A**

**STAFF RECOMMENDATIONS:** Approval as stated above, and waive the requirements for background information and references requested in section 2-541 (h) of the Monroe County Code.

**TOTAL COST:\$860,242.25**

**BUDGETED:** Yes   X   No

**COST TO COUNTY: \$860,242.25**

**SOURCE OF FUNDS:**One-Cent Infrastructure

**REVENUE PRODUCING:** Yes      No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty            OMB/Purchasing            / Risk Management

**DIVISION DIRECTOR APPROVAL:**

David S. Koppel, P.E.

**DOCUMENTATION:** Included   X   Not Required

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #**

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

**CONTRACT SUMMARY**

Contract with: Charley Toppino & Sons Contract #             
 Effective Date: 04/19/06  
 Expiration Date:           

Contract Purpose/Description:  
Construction of the Big Coppitt Key Park, and Demolition of the Big Pine Key Park

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Contract Manager: Ann Riger 4439 Facilities Develop/Stop #1  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 04/19/06 Agenda Deadline: 04/04/06

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 860,242.25 Current Year Portion: \$ 860,242.25  
 Budgeted? Yes ☒ No ☐ Account Codes: 304-25000-560620-CC9804-                        
 Grant: \$ N/A 304-25000-560620-CC0202-                        
 County Match: \$ N/A                                                       

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$           /yr For:             
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>4-3-06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>4-3-06</u>
Risk Management	<u>4-3-06</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>3-30-06</u>
<sup>EC</sup> O.M.B./Purchasing	<u>3/31/06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/31/06</u>
County Attorney	<u>3/30/06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3-30-06</u>

Comments:

ADMINISTRATIVE SERVICES DEPARTMENT

**PURCHASING OFFICE  
TABULATION SHEET**

OPEN DATE: AT 3:00 PM, March 23, 2006

TITLE: BIG COPPITT PARK, ALT: BIG PINE KEY PARK DEMOLITION

MAR 23 2006

RECEIVED BY  
C

RESPONDENT	BID BOND	TOTAL PRICE
PEDRO FALCON ELECTRICAL CONTRACTOR'S, INC.	YES 5%	\$ 659, 985.00 ALT: \$ 292,802.00
CHARLEY TOPPINO AND SONS	YES 5%	\$ 706,492.25 ALT: \$ 153,750.00

Bid Committee Present: Carlos Victores - Purchasing Office  
Members of the Public Present: None

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Carlos Victores - Supervisor

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# Standard Form of Agreement Between Owner and Contractor

*where the basis of payment is a STIPULATED SUM*

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## AGREEMENT

Made as of the 19<sup>th</sup> day of April in the year of TWO THOUSAND SIX  
*(In Words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name and address)*

Monroe County Board of County Commissioners  
500 Whitehead Street  
Key West, Florida 33040

and the Contractor:  
*(Name and address)*

Charley Toppino and Sons  
P.O. Box 787  
Key West, FL 33041

For the following Project:  
*(Include detailed description of project,  
location, address and scope)*

Big Coppitt Key Park  
Avenue F.  
Big Coppitt Key, FLorida

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Oversight Provided By:  
*(Name and address)*

The Director of Facilities Development  
Monroe County Facilities Development  
1100 Simonton Street  
Second Floor – Room 2-216  
Key West, Florida 33040

The Architect is:  
*(Name and Address)*

Any Reference to Architect or Construction Manager  
means Owner or Designee

The Owner and Contractor agree as set forth below.

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## **ARTICLE 1**

### **The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, the Contractor's Bid, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement: these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

## **ARTICLE 2**

### **The Work of this Contract**

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

#### **GENERAL SCOPE**

Provide all labor, supervision, engineering, materials, supplies, equipment, tools, transportation, surveying, layout, and protection for the proper execution and completion of all the work in accordance with the Contract Documents. The Work shall include but not be limited to that shown on the Drawings and detailed in the Technical Specifications included in this Bid Package.

- A. The work consists of the construction of a new Park, located on Avenue F, Big Coppitt Key, Monroe County, Florida. The work shall include, but not necessarily limited to, the following items.
  - 1. Demolition of existing buildings.
  - 2. Construction of a pavilion.
  - 3. Construction of a racket ball court.
  - 4. Construction of a basketball/roller hockey rink.
  - 5. Construction of three bocce courts.
  - 6. Lighting.
  - 7. Landscaping.
  - 8. Demolition of the Big Pine Key Park.
    - a) Demolition of buildings, concrete piers, the sewage treatment structures, power poles and miscellaneous structures.
    - b) Stock pile on site material designated as clean fill
    - c) Legally dispose of metal, demolished materials, wood and debris.

#### **SPECIAL PROVISIONS**

The following Special Provisions are intended to clarify the scope of work, or highlight features of the work, or modify, change, add to, or delete from the General Scope of this Bid Package.

- 1. All licenses required in order to perform the scope of work in the specified location, shall be procured and maintained by the contractor and his subcontractors. Contractor shall submit copies to Facilities Development prior to notice to proceed. Contractor's license to accompany bid.
- 2. Provide, replace, and maintain any safety rails and barricades as necessary during the process of work, or during deliveries of materials or equipment.

3. Contractor is to review Division 1 General Requirements for additional responsibilities required in order to perform this Work.
4. If in the event of conflicting, or overlapping requirements in any area of the bidding documents, technical specifications, or drawings, the most stringent condition shall be bid and constructed. Notify Facilities Development in any event, in order to not compromise the Owner's right to make appropriate decisions.
5. Contractor shall maintain As-Built Drawings, (Record Drawings per Section 01720), of his work progression.
6. This Contractor shall not store materials inside the pavilion.. Contractor shall provide suitable storage container, and be responsible for disposal off-site of all debris and trash.

### **ARTICLE 3**

#### **Date of Commencement and Substantial Completion**

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than *(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

**90 calendar days from date of commencement for the Big Coppitt Key Park.**

**90 calendar days from date of commencement for the Big Pine Key Park Demolition.**

Subject to adjustments of the Contract Time as provided by the Contract Document

*(Insert provisions if any for liquidated damages relating to failure to complete on time)*

The time or times stipulated in the contract for completion of the work of the contract or of specified phases of the contract shall be the calendar date or dates listed in the milestone schedule.

Liquidated damages will be based on the Substantial Completion Date for all work, modified by all approved extensions in time as set forth by Facilities Development's signature of approval on the Certificate of Substantial Completion. The liquidated damages table below shall be utilized to determine the amount of liquidated damages.

<u>CONTRACT AMOUNT</u>	<u>FIRST 15 DAYS</u>	<u>SECOND 15 DAYS</u>	<u>31<sup>ST</sup> DAY &amp; THEREAFTER</u>
Under \$50,000.00	\$50.00/Day	\$100.00/Day	\$250.00/Day
\$50,000.00- 99,999.00	100.00/Day	200.00/Day	750.00/Day
\$100,000.00 – 499,999.00	200.00/Day	500.00/Day	2,000.00/Day
\$500,000.00 and Up	500.00/Day	1,000.00/Day	3,500.00/Day

The Contractor's recovery of damages, and sole remedy for any delay caused by the Owner shall be an extension of time on the Contract.

### **ARTICLE 4**

#### **Contract Sum**

4.1 A) The owner shall pay the Contractor in current funds for the Contractor's performance of the Contract for the Big Coppitt Key Park, the Contract Sum of **Seven Hundred Six Thousand, Four**

Hundred Ninety-Two Dollars and 25 Cents (\$706,492.25), subject to additions and deductions as provided in the Contract Documents, and

B) The owner shall pay the Contractor in current funds for the Contractor's performance of the Contract for the Big Pine Key Park Demolition, the Contract Sum of One Hundred Fifty Three Thousand Seven Hundred Fifty Dollars and 00 Cents (\$153,750.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement. Attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

*Alternate No. 1, the demolition of the Big Pine Key Park. The owner shall pay the Contractor as stated in section 4.1 (B).*

4.3 Unit prices, if any, are as follows:

NONE

## **ARTICLE 5**

### **Progress Payments**

5.1 Based upon Applications for Payment submitted by the Contractor to Facilities Development, and upon Project Applications and Certificates for Payment issued by Facilities Development, the Owner shall make progress payments on account of the Contract Sum to the contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for payment shall be one calendar month ending on the last day of the month, or as follows:

5.3 Upon receipt from Contractor of a Correct Application for Payment, Owner shall comply with the Florida Prompt Payment Act, Sections 218.735 and 218.74 F.S. in making payment to contractor.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager may require. This schedule, unless objected to by the Construction Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.6 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included in applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. When both additions and credits covering related Work or

substitutions are involved in a change the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10%):

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Construction Manager has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety percent (90%) of the Contract Sum, less such amounts as the Construction Manager recommends and determines for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitations)*

## **ARTICLE 6** **Final Payment**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment: and (2) a final Project Certificate for Payment has been issued by the Contractor. Such final payment shall be made to the Contractor in accordance with the Florida Prompt Payment Act.

## **ARTICLE 7** **Miscellaneous Provisions**

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Temporary facilities and services:

*(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)*

7.3 Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners.

7.4 A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be



awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

7.4.1 The following items are part of this contract:

- a) Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS. Running from the date the monies were paid to Contractor.
- b) Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. Venue shall be in Monroe County Florida for any claims or proceedings arising out of this agreement. Mediation shall be held according to the rules of the 16<sup>th</sup> Judicial Circuit in Monroe County. This agreement is not subject to arbitration.
- c) Severability. If any term covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Contractor agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- d) Attorney's fees and Costs. The County and Contractor agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
- e) Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Contractor and their respective legal representatives, successors, and assigns.
- f) Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.
- g) Claims for Federal or State Aid. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

- h) Nondiscrimination. County and contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s.794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement; Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age.
- i) Covenant of No Interest. County and Contractor covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.
- j) Code of Ethics. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.
- k) No Solicitation/Payment. The County and Contractor warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely or it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owned, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- l) Public Access. The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

- m) Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Contractor in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.
- n) Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.
- o) Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.
- p) Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.
- q) Attestations. Contractor agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, and Ethics Statement, and a Drug-Free Workplace Statement.
- r) No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability because of the execution of this Agreement.
- s) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.
- t) Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

Special Conditions, if any are detailed in Section 01000 of the Project Manual for this Project

## **ARTICLE 8**

### **Termination or Suspension**

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, and one to the Construction Manager for use in the administration of the Contract, and the remainder to the Owner.

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairman

Date \_\_\_\_\_

(SEAL)  
Attest:

**CHARLEY TOPPINO & SONS**

By: \_\_\_\_\_

By: Charley Toppino

Title: \_\_\_\_\_

Title: President

**END OF SECTION 00500**

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

Susan M. Grimsley  
SUSAN M. GRIMSLEY  
ASSISTANT COUNTY ATTORNEY

3/30/06

# General Conditions of the Contract for Construction

*Where Facilities Development is Not a Constructor*

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## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 Basic Definitions

**1.1.1 The Contract Documents:** The Contract Documents consist of the Agreement between Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract, and the Contractor's bid and supporting documentation, and A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders and sample forms), the contractor's bid and supporting documentation.

**1.1.2 The Contract:** The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) Between Facilities Development and Contractor, (2) between the Owner and a Subcontractor or (5) between any persons or entities other than the Owner and Contractor. The Owner shall, however, be entitled to enforce the obligations under the Contract intended to facilitate performance of the duties of Facilities Development.

**1.1.3 The Work:** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**1.1.4 The Project:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces including persons or entities under separate contracts not administered by Facilities Development.

**1.1.5 The Drawings:** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**1.1.6 The Specifications:** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**1.1.7 The Project Manual:** The Project Manual is the volume which contains the bidding requirements, sample forms, Conditions of the Contract and Specifications.

#### 1.2 Execution, Correlation and Intent

**1.2.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Document is to include all items necessary for the proper execution and completion of the Work by the contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to all other like portions of the Work.

### **1.3 Ownership and Use of Drawings, Specifications and Other Documents**

1.3.1 The Drawing, Specifications and other documents are instruments of service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the owner, and unless otherwise indicated shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the owner, and copies thereof furnished to the Contractor, are for use solely with respect to the Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment suppliers unless they are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the owner appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the copyright or other reserved rights of the Owner.

1.3.2 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

### **1.4 Capitalization**

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

### **1.5 Interpretation**

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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## **ARTICLE 2**

### **OWNER**

#### **2.1 Definition**

2.1.1 The Owner is Monroe County. The term "Owner" means the Owner or the Owner's authorized representative.

#### **2.2 Information and Services Required of the Owner**

2.2.2 The owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through Facilities Development, shall secure and pay for the building permit.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The Owner shall forward all communications to the Contractor through Facilities Development.

2.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

#### **2.3 Owner's Right to Stop the Work**

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

#### **2.4 Owner's Right to Carry Out the Work**

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the



Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such second three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for another contractor or subcontractor or Facilities Development's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event of clean-up issues, Owner has right to provide a minimum of 24 hours notice. In the event of safety issues determined to be of a serious nature, as determined by Facilities Development, notice will be given, and contractor is required to rectify deficiency immediately.

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### **ARTICLE 3**

#### **CONTRACTOR**

##### **3.1 Definition**

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The plural term "Contractors" refers to persons or entities who perform construction under Conditions of the Contract that are administered by Facilities Development, and that are identical or substantially similar to these Conditions.

##### **3.2 Review of Contract Documents and Field Conditions by Contractor**

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to Facilities Development errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Facilities Development for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to Facilities Development. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Facilities Development, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Facilities Development at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

##### **3.3 Supervision and Construction Procedures**

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of Facilities Development as provided in Subparagraphs 4.6.3 and 4.6.5.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Facilities Development in their administration of the Contract, or by test, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent work.

3.3.5 The Contractor shall verify that the Construction Documents being worked with are the most recent and updated available, including all Addenda information. Also the Contractor will perform the work strictly in accordance with this contract.

### **3.4 Labor and Materials**

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 The Contractor is responsible for the conduct of his employees at all times. Misconduct, destruction of property, unsafe practices, or violation of any Federal or State regulations including abuse of alcohol or drugs, will be cause for permanent dismissal from the project. If any Contractor's employee is determined to be detrimental to the Project, as deemed by Facilities Development, the Contractor will remove and/or replace the employee at the request of Facilities Development. Employees dismissed from the project will be transported from the job site at the Contractor's expense.

3.4.4 The Contractor shall be totally responsible for the security of his work, materials, equipment, supplies, tools, machinery, and construction equipment.

3.4.5 The Contractor shall be responsible for complete, timely and accurate field measurements as necessary for proper coordination, fabrication and installation of his materials and equipment. The Contractor agrees to cooperate with Facilities Development, if required, to accommodate any discovered variations or deviations from the Drawings and Specifications so that the progress of the Work is not adversely affected.

### **3.5 Warranty**

3.5.1 The Contractor warrants to the Owner, Facilities Development that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Facilities Development, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 Taxes**

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.7 Permits, Fees and Notices**

3.7.1 The Contractor shall secure and pay for all permits, impact fees, governmental fees, licenses, inspections and surveys required by Federal, State, or Municipal bodies having jurisdiction over the project for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. The Owner will not assess any County building permit or County impact fees. The Contractor will be responsible for any other building permit costs or impact fees required for this project. The Contractor shall secure and pay for all building and specialty permits including plumbing, electrical, HVAC, etc.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify Facilities Development, and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Facilities Development, and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### **3.9 Superintendent**

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall be satisfactory to Facilities Development and shall not be changed except with the consent of Facilities Development, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ.

### **3.10 Contractor's Construction Schedule**

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information and Facilities Development's approval a Contractor's Construction Schedule for the Work. Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. This schedule, to be submitted within seven (7) days after Contract Award, shall indicate the dates for the starting and completion of the various stages of construction, shall be revised as required by the conditions of the Work, and shall be subject to Facilities Development's approval.

3.10.2 The Contractor shall cooperate with Facilities Development in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces.

3.10.4 The Contractor shall conform to the most recent schedules.

3.10.5 Facilities Development will conduct a weekly scheduling meeting which the Contractor shall attend. At this meeting, the parties can discuss jointly such matters as progress, scheduling, and problems.

### **3.11 Documents and Samples at the Site**

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Facilities Development and shall be delivered to Facilities Development for submittal to the Owner upon completion of the Work.

### **3.12 Shop Drawings, Product Data and Samples**

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Facilities Development is subject to the limitations of Subparagraph 4.6.12.

3.12.5 The Contractor shall review, approve and submit to Facilities Development, in accordance with the schedule and sequence approved by Facilities Development, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Contractor shall cooperate with Facilities Development in the coordination of the

Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Facilities Development. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Facilities Development's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed Facilities Development in writing of such deviation at the time of submittal and Facilities Development have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Facilities Development's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Facilities Development on previous submittals.

3.12.10 Informational submittals upon which Facilities Development are not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Facilities Development shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.12 If materials specified in the Contract Documents are not available on the present market, the Contractor may submit data on substitute materials to Facilities Development for approval by the Owner.

### **3.13 Use of Site**

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, Facilities Development before using any portion of the site.

### **3.14 Cutting and Patching**

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly; He shall also provide protection of existing work as required.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Contractors by cutting, patching,

excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by other Contractors or by the Owner's own forces except with written consent of Facilities Development, Owner and such other contractors: such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work. When structural members are involved, the written consent of Facilities Development shall also be required. The Contractor shall not unreasonably withhold from Facilities Development or any separate contractor his consent to cutting or otherwise altering the Work.

3.14.3 The Contractor shall arrange for any blockouts cutout, or opening required for the installation of his materials and equipment and the execution of his work, whether or not shown or indicated on the Drawings. The Contractor shall be further responsible for sealing and/or finishing, in an acceptable fashion and meeting any applicable code requirements, and such block-out, cutout opening, or other hole in any fire-related floor, ceiling, wall, security wall, or any other finished surface.

### **3.15 Cleaning Up**

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the project waste materials rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. Clean up shall be performed to the satisfaction of the Owner or Facilities Development.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, Facilities Development may do so with the Owner's approval and the cost thereof shall be charged to the Contractor.

### **3.16 Access to Work**

3.16.1 The Contractor shall provide the Owner, Facilities Development access to the Work in preparation and progress wherever located.

### **3.17 Royalties and Patents**

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, Facilities Development harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to Facilities Development.

### **3.18 Indemnification and Hold Harmless**

3.18.1 The Contractor covenants and agrees to indemnify and hold harmless Monroe County and Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the Contractor or any of its subcontractors in any tier, occasioned by the negligence or the wrongful act or omission of the Contractor or its subcontractors in any tier, their employees, or agents. The first ten dollars

(\$10.00) of remuneration paid to the Contractor is for the indemnification provided for the above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

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## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTACT**

#### **4.1 Not Used**

#### **4.2 Facilities Development**

4.2.1 Facilities Development means the Monroe County department of Facilities Development.

4.3 Duties, responsibilities and limitations of authority of Facilities Development as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Facilities Development, and Contractor. Consent shall not be unreasonably withheld.

4.4 In case of termination of employment of Facilities Development, the Owner shall appoint a Facilities Development against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former Facilities Development.

#### **4.5 Not Used**

#### **4.6 Administration of the Contract**

4.6.1 Facilities Development will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. Facilities Development will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Document, unless otherwise modified by written instrument in accordance with other provision of the Contract.

4.6.2 Facilities Development will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.6.3 Facilities Development will provide for coordination of the activities of other Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and Facilities Development and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, Facilities Development and the Owner until subsequently revised.

4.6.4 Not used.

4.6.5 Facilities Development will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work

and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, Facilities Development will not be required to make exhaustive or continuous onsite inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, Facilities Development will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the work.

4.6.6 Facilities Development, will not have control over or charge of and will not be responsible for construction means, method, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Facilities Development will not have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.6.7 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through Facilities Development. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through Facilities Development.

4.6.8 Facilities Development will review and certify all Applications for Payment by the Contractor, including final payment. Facilities Development will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractor into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due the Contractors, the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, will be processed by Facilities Development.

4.6.9 Based on Facilities Development's observations and evaluations of Contractors' Applications for Payment, Facilities Development will certify the amounts due the Contractors and will issue a Project Certificate for Payment.

4.6.10 Facilities Development will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Owner. Subject to review, Facilities Development will have the authority to reject Work which does not conform to the Contract Documents. Whenever Facilities Development considers it necessary or advisable for implementation of the intent of the Contract Documents, Facilities Development will have authority to require additional inspection or testing of the work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. The foregoing authority of Facilities Development will be subject to the provisions of Subparagraphs 4.6.18 through 4.6.20 inclusive, with respect to interpretations and decisions of Facilities Development. However, Facilities Development's has no authority to act under this Subparagraph 4.6.10 nor a decision made by him in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Facilities Development to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

4.6.11 Facilities Development will receive from the Contractor and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other Contractors. Facilities Development's actions will be taken with such reasonable promptness as



to cause no delay in the Work of the Contractor or in the activities of other Contractors or the Owner.

4.6.12 Facilities Development will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Facilities Development's action will be taken with such promptness consistent with the constraints of the project schedule so as to cause no delay in the Work of the Contractor or in the activities of the other Contractors, the Owner, or Facilities Development, while allowing sufficient time in the Facilities Development's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. Facilities Development's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. Facilities Development's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Facilities Development, of any construction means, methods, techniques, sequences or procedures. Facilities Development's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.6.13 Facilities Development will prepare Change Orders and Construction Change Directives.

4.6.14 Facilities Development will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Paragraph 7.4.

4.6.16 The Contractor will assist Facilities Development in conducting inspections to determine the dates of Substantial completion and final completion, and will receive and forward to Facilities Development written warranties and related documents required by the Contract and assembled by the Contractor. Facilities Development will issue a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.6.17 If the Owner agrees, Facilities Development will provide one or more project representatives to assist in carrying out the responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.6.18 The Owner will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of Facilities Development, or Contractor. Facilities Development's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of Facilities Development shall be furnished in compliance with this Paragraph 4.6, then delay shall not be recognized on account of failure by Facilities Development to furnish such interpretations until 15 days after written request is made for them.

4.6.19 Interpretations and decisions of Facilities Development will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Facilities Development will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.6.20 Facilities Development decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **4.7 Claims and Disputes**

**4.7.1 Definition.** A Claim is demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the claim.

**4.7.2 Decision of Facilities Development.** Claims, including those alleging an error or omission by Facilities Development, shall be referred initially to Facilities Development for action as provided in Paragraph 4.8. A decision by Facilities Development, as provided in Subparagraph 4.8.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by Facilities Development in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Facilities Development is vacant, (2) Facilities Development has not received evidence or has failed to render a decision within agreed time limits, (3) Facilities Development has failed to take action required under Subparagraph 4.8.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to Facilities Development or (5) the Claim relates to a mechanic's lien.

**4.7.3 Time Limits on Claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**4.7.4 Continuing Contract Performance.** Pending final resolution of a Claim unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.7.5 Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claim by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**4.7.6 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. Facilities Development will promptly investigate such conditions and, if they differ

materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend and equitable adjustment in the Contract Sum or Contract Time, or both. If Facilities Development determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, Facilities Development shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after Facilities Development has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to Facilities Development for determination, pursuant to Paragraph 4.8.

**4.7.7 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from Facilities Development, (2) Not Applicable (3) a written order for a minor change in the Work issued by Facilities Development, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

#### **4.7.8 Claims for Additional Time.**

4.7.8.1. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given.

4.7.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**4.7.9 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.7.7 or 4.7.8.

#### **4.8 Resolution of Claims and Disputes**

4.8.1 Facilities Development will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when Facilities Development expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. Facilities Development may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.8.2 If a Claim has been resolved, Facilities Development will prepare or obtain appropriate documentation.

4.8.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after Facilities Development's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested Facilities Development, (2) modify the initial Claim or (3) notify Facilities Development that the initial Claim stands.

4.8.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by Facilities Development (FD), FD will notify the parties in writing that FD's decision will be made within seven days, which decision shall be final and binding on the parties. Upon expiration of such time period, FD will render to the parties FD's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, FD may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.8.5 Court Determination of Claims/Disputes. Any claim or dispute that the parties are unable to achieve a settlement among themselves must be decided by the Circuit Court, 16th Judicial Circuit, Monroe County, Florida.

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## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 Definitions**

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or subcontractors of other Contractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

#### **5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Facilities Development for review by the Owner, Facilities Development the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Facilities Development will promptly reply to the Contractor in writing stating whether or not the Owner, Facilities Development, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Facilities Development to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, or Facilities Development has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Owner, or Facilities Development, has made reasonable objection.

5.2.3 If the Owner or Facilities Development refuses to accept any person or entity on a list submitted by the Contractor in response to the requirements of the Contract Documents, the Contractor shall submit an acceptable substitute; however, no increase in the Contract Sum shall be allowed for any such substitution.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, or Facilities Development makes reasonable objection to such change.

### **5.3 Subcontractual Relations**

5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, and Facilities Development. Each subcontract agreement shall preserve and protect the rights of the Owner, and Facilities Development under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. When appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### **5.4 Contingent Assignment of Subcontracts**

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under public construction bond covering the Contract.

5.4.2 If the work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

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## **ARTICLE 6**

## **CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS**

### **6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

6.1.1 The Owner reserves the right to perform construction or operations released to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by Facilities Development. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver or subrogation.

6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by Facilities Development, the Owner shall provide for coordination of such forces with the Work of the Contractor who shall cooperate with them.

6.1.3 It shall be the responsibility of the Contractor to coordinate his work with the work of other contractors on the site. The Owner and Facilities Development shall be held harmless of any and all costs associated with improper coordination.

## **6.2 Mutual Responsibility**

6.2.1 The Contractor shall afford the Owner's own forces, Facilities Development and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Facilities Development apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Contractors' completed or partially completed or partial completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or other Contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and other Contractors shall be subject to the provisions of Paragraph 4.7 provided the other Contractors have reciprocal obligations.

6.2.6 The Owner and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.2.7 Should the Contractor contend that he is entitled to an extension of time for completion of any portion or portions of the work, he shall, within (72) hours of the occurrence of the cause of the delay, notify Facilities Development in writing, of his contention: setting forth (A) the cause for the delay, (B) a description of the portion or portions of work affected thereby, and (C) all details pertinent thereto. A subsequent written application for the specific number of days of extension of time requested shall be made by the Contractor to Facilities Development within (72) hours after the delay has ceased to exist.

.1 It is a condition precedent to the consideration or prosecution of any claim for an extension of time that the foregoing provisions be strictly adhered to in each instance and, if the Contractor fails to comply, he shall be deemed to have waived the claim.

.2 The Contractor agrees that whether or not any delay, regardless of cause, shall be the basis for an extension of time he shall have no claim against the Owner or Facilities Development for an increase in the Contract price, nor a claim against the Owner or Facilities Development for a payment or allowance of any kind for damage, loss or expense resulting from delays; nor shall the Contractor have any claim for damage, loss or expense resulting from interruptions to, or suspension of, his work to enable other contractors to perform their work. The only remedy available to the Contractor shall be an extension of time.

## **6.3 Owner's Right to Clean Up**

6.3.1 If a dispute arises among the Contractor, other Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as Facilities Development, in consultation with the Owner, determines to be just.

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## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 Changes**

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Facilities Development, and Contractor; a Construction Change Directive require agreement by the Owner, and Facilities Development and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by Facilities Development alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

#### **7.2 Change Orders**

7.2.1 A change Order is a written instrument prepared by Facilities Development and signed by the Owner, Facilities Development, and Contractor, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

7.2.2 The cost or credit to the owner resulting from a change in the Work shall be determined in one or more of the following:

- .1 mutual acceptance of lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agrees upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

.4 or by method provided in subparagraph 7.2.3.

7.2.3 If none of the methods set forth in Clauses 7.2.1 or 7.2.2 is agreed upon, the Contractor, provided a written order signed by the Owner or Facilities Development is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by daily force accounts in a form acceptable to the Owner and Facilities Development. The daily force account forms shall identify Contractor and /or Subcontractor personnel by name, total hours for each man, each piece of equipment and total hours for equipment and all material(s) by type for each extra Work activity claim. Each daily force account form shall be signed by the designated Facilities Development's representative no later than the close of business on the day the Work is performed to verify the items and hours listed. Extended pricing of these forms shall be submitted to Facilities Development with all supporting documentation required by Facilities Development for inclusion into a change order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; works' or workmen's compensation insurance; and the rental value of equipment and machinery. Markups for overhead and profit will be in accordance with subparagraph 7.2.4. Pending final determination of cost, payments on account shall be made as determined by Facilities Development. The amount of credit to be allowed by the Contractor for any deletion or change, which results in a net decrease in the Contract Sum, will be the amount of the actual net cost as confirmed by Facilities Development. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any with respect to that change.

7.2.4 The actual cost of Changes in the Work may include all items of labor or material, power tools, and equipment actually used, utilities, pro rata charges for foreman, and all payroll charges such as Public Liability and Workmen's Compensation Insurance. No percentage for overhead and profit shall be allowed on items of Social Security and Sales Tax. If deductions are ordered the credit shall be the net cost. Items considered as overhead shall include insurance other than that mentioned above, bond or bonds, superintendent, timekeeper, clerks, watchmen, use of small tools, miscellaneous supplies, incidental job costs, warranties, and all general home/field office expenses. The actual cost of Changes in the Work (other than those covered by unit prices set forth in the Contract Documents) shall be computed as follows:

.1 Overhead and profit will be paid at the same rate as is illustrated in the Schedule of Values;

.2 The formula for overhead and profit will be the second line item identified as overhead and profit divided by the original contract amount.

7.2.5 The Contractor shall furnish to the Owner through Facilities Development, an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered. Any additional supporting documentation requested by Facilities Development such as certified quotations or invoices shall be provided by the Contractor to Facilities Development at no additional cost to the Owner.

7.2.6 If the Contractor claims that any instructions given to him by Facilities Development, by drawings or otherwise, involve extra Work not covered by the Contract, he shall give Facilities Development written notice thereof within five (5) days after the receipt of such instructions and before proceeding to execute the work, except in emergencies endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3.

.1 The written notice to Facilities Development for the Extra Work shall include a complete description of the extra Work, the total cost and a detailed cost breakdown by labor,



material and equipment for each additional activity required to be performed. Mark-ups shall be limited as specified elsewhere in this Article.

.2 Except as otherwise specifically provided, no claim for additional cost shall be allowed unless the complete notice specified by this subparagraph is given by the Contractor.

7.2.7 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute or claim proceeding, and Owner shall continue to make payments to the Contractor in accordance with the Contract Documents. Disputes unresolved shall be settled in accordance with subparagraph 4.8.5. The Contractor shall maintain completed daily force account forms in accordance with subparagraph 7.2.3 for any dispute or claim item.

#### **7.4 Authority**

7.4.1 Facilities Development will have authority to order minor changes in the Work not involving adjustment in the Contract sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through Facilities Development and shall be binding on the Owner and Contractor. The Contractor shall carry out such written order promptly.

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### **ARTICLE 8**

#### **TIME**

##### **8.1 Definitions**

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by Facilities Development in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.1.5 The Owner/Facilities Development shall be the final judge as to whether Substantial Completion has been achieved and certifies the date to the Contractor.

##### **8.2 Progress and Completion**

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **8.3 Delays and Extensions of Time**

8.3.1 If the Contractor is delayed, at any time, in the progress of the Work by any act or neglect of the Owner, Facilities Development, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, Facilities Development, or by any other cause which Facilities Development determines may justify the delay, then the Contract Time shall be extended by no cost Change Order for such reasonable time as Facilities Development may determine, in accordance with subparagraph 6.2.7.

8.3.2 Any claim for extension of time shall be made in writing to Facilities Development not more than seventy-two (72) hours after the commencement of the delay in accordance with paragraph 6.2.7; otherwise it shall be waived. Any claim for extension of time shall state the cause of the delay and the number of days of extension requested. If the cause of the delay is continuing, only one claim is necessary, but the Contractor shall report the termination of the cause for the delay within seventy-two (72) hours after such termination in accordance with paragraph 6.2.7; otherwise, any claim for extension of time based upon that cause shall be waived.

8.3.3 No claim for an increase in the Contract Sum for either acceleration or delay will be allowed for extensions of time pursuant to this Paragraph 8.3 or for other changes in the Construction Schedules.

8.3.4 If the Project is delayed as a result of the Contractor's refusal or failure to begin the Work on the date of commencement as defined in Paragraph 8.1.2, or his refusal or failure to carry the Work forward expeditiously with adequate forces, the Contractor causing the delay shall be liable, but not limited to, delay claims from other Contractors which are affected.

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## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 Contract Sum**

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

#### **9.2 Schedule of Values**

9.2.1 Before the first Application for Payment, the Contractor shall submit to Facilities Development, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Facilities Development may require. This schedule, unless objected to by Facilities Development, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **9.3 Applications for Payment**

9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to Facilities Development an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, or Facilities Development may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

.1 Such applications may include request for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. All Subcontractors and Sub-subcontractors shall execute an agreement stating that title will so pass, upon their receipt of payment from the Contractor. The warranties are for the administrative convenience of the Owner only and do not create an obligation on the part of the Owner to pay directly any unpaid subcontractor, laborer or materialmen. Such persons must seek payment from the Contractor or his public construction bond surety only.

### **9.4 Certificate for Payment**

9.4.1 Facilities Development will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and certify the amounts due on such applications.

9.4.2 Within seven days after receipt of the Project Application for Payment, Facilities Development will either issue to the Owner a Project Certificate for Payment, with a copy to the Contractor, for such amount as Facilities Development determine is properly due, or notify the Contractor and Owner in writing of Facilities Development's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. Such notification will be forwarded to the Contractor by Facilities Development.

9.4.3 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by Facilities Development to the Owner, based on their individual observations at the site and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of Facilities Development's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Facilities Development. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that Facilities Development has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **9.5 Decisions to Withhold Certification**

9.5.1 Facilities Development may decline to approve an Application for Payment if, in his opinion, the application is not adequately supported. If the Contractor and Facilities Development cannot agree on a revised amount, Facilities Development shall process the Application for the amount he deems appropriate. Facilities Development may also decline to approve any Application for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify, in whole or part, any approval previously made to such extent as may be necessary in his opinion because of: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims; (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to Facilities Development, the Owner, or another contractor working at the project; (6) reasonable evidence that the Work will not be completed within the contract time; (7) persistent failure to carry out the Work in accordance with the Contract Documents.

.1 No payment shall be made to the Contractor until certificates of insurance or other evidence of compliance by the Contractor, within all the requirements of Article 11, have been filed with the Owner and Facilities Development.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## **9.6 Progress Payments**

9.6.1 After Facilities Development has issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify Facilities Development. From the total of the amount determined to be payable on a progress payment, ten percent (10%) of such total amount will be deducted and retained by the Owner until final payment is made. The balance ninety percent (90%) of the amount payable, less all previous payments, shall be certified for payment.

.1 It is understood and agreed that the Contractor shall not be entitled to demand or receive progress payment based on quantities of Work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by Facilities Development to be a part of the final quantity for the item of Work in question.

.2 No progress payment shall bind the Owner to the acceptance of any materials or Work in place, as to quality or quantity. All progress payments are subject to correction at the time of final payments.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 Facilities Development will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, and Facilities Development on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner, or Facilities Development shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 All material and work covered by partial payments made shall thereupon become the sole property of the Owner, and by this provision shall not be construed as relieving the Contractor from the sole responsibility for the materials and Work upon which payments have been made or the restoration for any damaged material, or as a waiver to the right of the Owner or Facilities Development to require the fulfillment of all the terms of the Contract.

9.6.8 Except in case of bona fide disputes, or where the Contractor has some other justifiable reason for delay, the Contractor shall pay for all transportation and utility services not later than the end of the calendar month following that in which services are rendered and for all materials, tools, and other expendable equipment which are delivered at the site of the Project. The Contractor shall pay to each of his Subcontractors, not later than the end of the calendar month in which each payment is made to the Contractor, the representative amount allowed the Contractor on account of the Work performed by is Subcontractor interest therein. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his suppliers and Sub-subcontractors in a similar manner.

## **9.8 Substantial Completion**

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and Facilities

Development shall jointly prepare a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the list, Facilities Development, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Facilities Development. The Contractor shall then submit a request for another inspection by Facilities Development, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, Facilities Development will prepare a Certificate of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by Facilities Development, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## **9.9 Partial Occupancy or Use**

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.1 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Facilities Development shall jointly prepare a list as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of Facilities Development.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Facilities Development and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9.10 Final Completion and Final Payment**

9.10.1 Upon completion of the Work, the Contractor shall forward to Facilities Development a written notice that the Work is ready for final inspection and acceptance and shall also forward to Facilities Development a final Contractor's Application for Payment. Upon receipt, Facilities Development will promptly make such inspection. When Facilities Development, finds the Work acceptable under the Contract Documents and the Contract fully performed, Facilities Development will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. Facilities Development's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to Facilities Development (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payments currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, if a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and Facilities Development so confirm, the Owner shall, upon application by the Contractor and certification by Facilities Development, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bond have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to Facilities Development prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims by the Owner as provided in Subparagraph 4.7.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described Subparagraph 4.7.5.

## **9.11 Payment of Subcontractors**

9.11.1 Any requirement of this Article 9 that the Contractor furnish proof to the Owner or Facilities Development that the subcontractors and materialmen have been paid is for the protection and convenience of the Owner only. Unpaid subcontractors and materialmen may only seek payment from the Contractor and the surety that provided the Contractor's Public

Construction Bond. The Contractor must insert this paragraph 9.11 in all its contracts with subcontractors and materialmen.

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## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 Safety Precautions and Programs**

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to Facilities Development for review and coordination with the safety programs of other Contractors.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, and Facilities Development in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by Facilities Development.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Facilities Development in writing. The Owner, Contractor and Facilities Development shall then proceed in the same manner described in Subparagraph 10.1.2.

10.1.6 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Facilities Development the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and Facilities Development will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor or Facilities Development has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and Facilities Development have no reasonable objection.

#### **10.2 Safety of Persons and Property**

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:



- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Clauses 10.2.1.2, 10.2.1.3, 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Facilities Development or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, and Facilities Development.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **10.3 Emergencies**

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

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## **ARTICLE 11**

### **INSURANCE AND BONDS**

11.1.1 Prior to commencement of Work governed by this contract (including the prestaging of personnel and material), the Contractor shall obtain, at their own expense, insurance as

specified in the schedule set forth in Section 00110 Proposal Form which are made part of this Agreement. The Contractor will ensure that the insurance obtained will extend protection to all subcontractors engaged by the Contractor. As an alternative the Contractor may require all subcontractors to obtain insurance consistent with the attached schedules.

11.1.2 The Contractor will not be permitted to commence Work governed by the Agreement (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Delays in the commencement of Work resulting from the failure of the Contractor to provide satisfactory evidence of the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence.

11.1.3 The Contractor shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all Work until the required insurance has been reinstated or replaced. Delays in the completion of Work resulting from the failure of the Contractor to maintain the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence.

11.1.4 The Contractor shall provide, to the County in care of Facilities Development, as satisfactory evidence of the required insurance, either:

Certificate of Insurance

or

A certified copy of the actual insurance policy

11.1.5 The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this Contract.

11.1.6 All insurance policies must specify that they are not subject to cancellation, nonrenewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

11.1.7 The acceptance and/or approval of the Contractor's insurance shall not be construed as relieving the Contractor from any liability or obligation assumed under this contract or imposed by law.

11.1.8 The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Worker's Compensation.

11.1.9 In addition, the County will be named as an additional insured and loss payee on all policies covering County -owned property.

11.1.10 Any deviations from these General Insurance Requirements must be requested in writing on the County prepared form entitled "Request for Waiver of Insurance Requirements" and approved by the Monroe County's Risk Manager.

## **11.2 Builder's Risk Insurance (NOT REQUIRED ON THIS PROJECT)**

## **11.3 Public Construction Bond**

11.3.1 The Owner shall require the Contractor to furnish a Public Construction Bond in the form provided by the Owner in this section as a guarantee for the faithful performance of the Contract (including guarantee and maintenance provisions) and the payment of all obligations arising thereunder. The Public Construction Bond shall be in an amount at least equal to the contract price. This contract is subject to the provisions of Section 255.05, Florida Statutes, which are incorporated herein.

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## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF WORK**

#### **12.1 Uncovering of Work**

12.1.1 If a portion of the Work is covered contrary to Facilities Development's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which Facilities Development has not specifically requested to observe prior to its being covered, Facilities Development may request to see such Work and it shall be uncovered by the Contractor, if such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner, if such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

#### **12.2 Correction of Work**

12.2.1 The Contractor shall promptly correct Work rejected by Facilities Development or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Facilities Development's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Facilities Development, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense, if the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for Facilities Development's services and expenses made necessary thereby, if such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **12.3 Acceptance of Nonconforming Work**

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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## **ARTICLE 13**

## **MISCELLANEOUS PROVISION**

### **13.1 Governing Law**

13.1.1 The contract shall be governed by the laws of the State of Florida. Venue for any claims or disputes arising under this contract shall be in the Circuit Court of the 16th Judicial Circuit of the State of Florida.

### **13.2 Successors and Assigns**

13.2.1 The Owner or Facilities Development (as the case may be) and the Contractor each binds himself, his partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

13.2.2 The Contractor shall not assign any monies due or to become due under this Contract without prior written consent of the Owner or Facilities Development.

### **13.3 Written Notice**

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.3.2 All written correspondence to Facilities Development shall be serialized, dated, and signed by an authorized representative of the Contractor. The correspondence shall be directed to:

Director of Facilities Development  
Monroe County Facilities Development  
1100 Simonton Street  
Room 2-216  
Key West, Florida 33040

or hand delivered to Facilities Development's office.

### **13.4 Rights and Remedies**

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Facilities Development, or Contractor shall constitute a waiver of a right or duty afforded them under the contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **13.5 Tests and Inspections**

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give Facilities Development timely notice of when and where tests and inspections are to be made so Facilities Development may observe such procedures. The Owner shall bear costs of test, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If Facilities Development, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, Facilities Development will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to Facilities

Development of when and where tests and inspections are to be made so Facilities Development may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for Facilities Development's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to Facilities Development.

13.5.5 If Facilities Development is to observe tests, inspections or approvals required by the Contract Documents, Facilities Development will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **13.7 Commencement of Statutory Limitation Period**

13.7.1 The statute of limitations applicable to this contract are as provided in Section 95.11 (3) (C), Florida Statutes.

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## **ARTICLE 14**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.1 Termination by the Contractor**

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because Facilities Development has not issued a certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.2, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period whichever is less; or
- .5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Facilities Development, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner or Facilities Development, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

## **14.2 Termination by the Owner for Cause**

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, after consultation with Facilities Development, and upon certification by Facilities Development that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, 72 hours written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for Facilities Development's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amounts to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by Facilities Development, and this obligation for payment shall survive termination of the Contract.

## **14.3 Suspension by the Owner for Convenience**

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

**END OF SECTION 00750**



### INSURANCE REQUIREMENTS

Worker's Compensation	Statutory Limits
Employers Liability	\$500,000/500,000/500,000
General Liability, including	\$5,000,000 Combigned Single Limit
Premises Operation	
Blanket Contractual	
Expanded Definition of Property Damage	
Products and Completed Operations	
Personal Injury	
Underground, Explosion and Collapse (XCU)	
Vehicle Liability (Owned, nonowned, and hired vehicles)	\$500,000 per Person
	\$1,000,000 per Occurance
	\$100,000 Property Damage
	\$1,000,000 Combigned Single Limit
Builders' Risk	Limits equal to the completed project

### INDEMNIFICATION AND HOLD HARMLESS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

The Contractor covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the contractor or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the Contractor or its Subcontractor(s) in any tier, their employees, or agents.

In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

The first ten dollars (\$10.00) of remuneration paid to the Contractor is for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
3/29/2006**PRODUCER**  
Seitlin  
9800 NW 41 Street, Suite #300  
Miami FL 33178  
(305) 591-0090 (305) 593-6993

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Charley Toppino & Sons, Inc. &  
Monroe Concrete Products Inc.  
P.O. Box 787  
Key West FL 33041**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Bridgefield Employers

10701

INSURER B: Westchester Surplus Lines Ins

10172

INSURER C: National Casualty Company

11991

INSURER D:

INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	<b>GENERAL LIABILITY</b>	G22037407001	2/2/2006	2/2/2007	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COM/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
C	<b>AUTOMOBILE LIABILITY</b>	CA00196848	2/2/2006	2/2/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
B	<b>EXCESS/UMBRELLA LIABILITY</b>	G22037419001	2/2/2006	2/2/2007	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
					\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	830-35707	1/14/2006	1/14/2007	WC STATU-TORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**RE: BIG COPPITT PARK, BIG PINE KEY PARK PROJECT. PROJECT #0604  
CERTIFICATE HOLDER IS ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY AS REQUIRED BY WRITTEN CONTRACT SUBJECT TO THE POLICY TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS.**CERTIFICATE HOLDER**MONROE COUNTY BOARD OF COUNTY  
COMMISSIONERS  
1100 SIMONTON ST  
KEY WEST FL 33040**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

SECTION 00110

PROPOSAL FORM

MAR 24 2006  
RECEIVED BY: 

BID TO: MONROE COUNTY BOARD OF COUNTY COMMISSIONERS  
c/o PURCHASING DEPARTMENT  
1100 SIMONTON STREET  
ROOM 1-213  
KEY WEST, FLORIDA 33040

BID FROM: CHARLEY TOPPING & SONS  
PO BOX 1727  
KEY WEST, FL 33041

The undersigned, having carefully examined the Work and reference Drawings, Specifications, Proposal, and Addenda thereto and other Contract Documents for the construction of:

**BIG COPPITT PARK at AVENUE F on BIG COPPITT KEY, FLORIDA**

and having carefully examined the site where the Work is to be performed, having become familiar with all local conditions including labor affecting the cost thereof, and having familiarized himself with material availability, Federal, State, and Local laws, ordinances, rules and regulations affecting performance of the Work, does hereby propose to furnish all labor, mechanics, superintendents, tools, material, equipment, transportation services, and all incidentals necessary to perform and complete said Work and work incidental hereto, in a workman-like manner, in conformance with said Drawings, Specifications, and other Contract Documents including Addenda issued thereto.

The undersigned further certifies that he has personally inspected the actual location of where the Work is to be performed, together with the local sources of supply and that he understands the conditions under which the Work is to be performed. The successful bidder shall assume the risk of any and all costs and delays arising from the existence of any subsurface or other latent physical condition which could be reasonably anticipated by reference to documentary information provided and made available, and from inspection and examination of the site.

Seven Hundred Six Thousand Four Hundred Ninety Two Dollars & 25/100 Dollars.  
(Total Base Bid - words)

706,492.25

I acknowledge Alternates as follows:

**ALTERNATE NO. 1 – BIG PINE KEY PARK DEMOLITION**

See Project Manual and Drawings for Big Pine Key Park Demolition. Manual and Drawings are separate and in addition to the Manual and Drawings for Big Coppitt Park.

Add the sum of \$ 153,750 (words) One Hundred Fifty Three Thousand, Seven Hundred Fifty Dollars & 0/100

I acknowledge receipt of Addenda No.(s)

No. 1 Dated 2/12/06

BIG COPPITT PARK

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

I have included pages 2 through 6 of the Bid Proposal which entails the Proposal Form\_\_\_\_, and the required Bid Security\_\_\_\_, the Non-Collusion Affidavit\_\_\_\_, the Lobbying and Conflict of Interest Clause\_\_\_\_. In addition, I have included a certified copy of Contractor's License, Monroe County Occupational Licence, Insurance Requirements- Hold Harmless Statement and an Insurance Agent's Statement.

**(Check mark items above, as a reminder that they are included.)**

Mailing Address:

CHARLEY TOPPINO & SONS  
P.O. Box 1787  
KEY WEST, FL 33041

Phone Number:

2965606

Date: 3/23/06

Signed:

Edward Toppino Jr.

EDWARD TOPPINO JR  
(Name)

V.P  
(Title)

Witness:

Ronald J. Armstrong

(Seal)

## NON-COLLUSION AFFIDAVIT

I, EDUARDO TOPPINO JR of the city KEY WEST  
according to law on my oath, and under penalty of perjury, depose and say that:

1. I am VP  
of the firm of CHARLEY TOPPINO & SONS  
the bidder making the Proposal for the project described in the notice for calling  
for bids for:  
BIG COPPITT PARK  
and that I executed the said proposal with full authority to do so;
2. the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
3. unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and
4. no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit, or not to submit, a bid for the purpose of restricting competition;
5. the statements contained in this affidavit are true and correct, and made with full knowledge that said project.

Edward Toppino Jr.  
(Signature of Bidder)

3/23/06  
(Date)

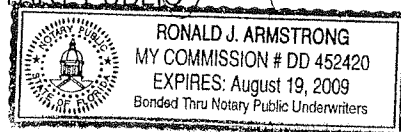
STATE OF: FL

COUNTY OF: MONROE

PERSONALLY APPEARED BEFORE ME, the undersigned authority, EDUARDO  
Toppino Jr who, after first being sworn by me, (name of individual signing) affixed his/her  
signature in the space provided above on this 23 day of MARCH  
2006.

Ronald J. Armstrong  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_



## LOBBYING AND CONFLICT OF INTEREST CLAUSE

SWORN STATEMENT UNDER ORDINANCE NO. 010-1990  
MONROE COUNTY, FLORIDA

## ETHICS CLAUSE

" CHARLEY TOPPING & SONS "  
(Company)

"... warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former County officer or employee in violation of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee".

Edward Topping Jr  
(Signature)

Date: 3/23/06

STATE OF: FL

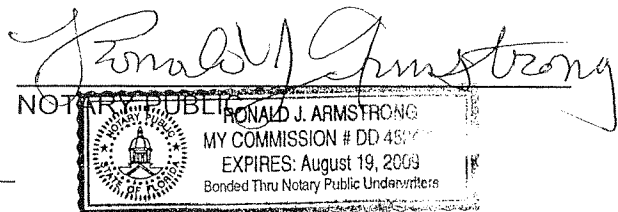
COUNTY OF: MONROE

Subscribed and sworn to (or affirmed) before me on 3/23/06  
\_\_\_\_\_ (date)

by EDWARD TOPPING JR (name of affiant). He/She is personally  
known to me

or has produced \_\_\_\_\_ as  
identification. (type of identification)

My commission expires: \_\_\_\_\_



**DRUG-FREE WORKPLACE FORM**

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that:

CHARLEY TOPPANO & SONS  
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, or any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Edward Toppano Jr.  
Bidders Signature  
3/23/06  
Date



MONROE COUNTY

RECEIPT NO.

79607

ISSUE DATE: 12/12/2005

COUNTY LIC# ENG I 132A

CC: ENGI

FEE DUE

FEE PAID

200.00  
200.00

THIS CERTIFIES THAT

TOPPINO, FRANK P.

QUALIFIES AS A ENGINEERING CONT I

IN GOOD STANDING AND THIS CERTIFICATE

OF COMPETENCY IS VALID AND IN FORCE

UNTIL 10/31/07

TOPPINO, FRANK P.

CHARLEY TOPPINO & SONS, INC.

P.O. BOX 787

KEY WEST FL, 33040

CERTIFICATE OF COMPETENCY

MONROE COUNTY  
THIS IS TO CERTIFY THAT  
TOPPINO, FRANK P.  
QUALIFIES AS A  
ENGINEERING CONT I  
THIS CERTIFICATE EXPIRES ON  
10/31/07

UNLESS REVOKED  
ACCORDING TO LAW

*Joseph Cackali*  
BUILDING OFFICIAL

MONROE COUNTY

RECEIPT NO.

79605

ISSUE DATE: 12/12/2005

COUNTY LIC# GC 152A

CC: RG

FEE DUE

FEE PAID

200.00  
200.00

THIS CERTIFIES THAT

TOPPINO, FRANK P.

QUALIFIES AS A GENERAL CONTRACTOR

IN GOOD STANDING AND THIS CERTIFICATE

OF COMPETENCY IS VALID AND IN FORCE

UNTIL 10/31/07

TOPPINO, FRANK P.

TOPPINO'S, INC.

P.O. BOX 787

KEY WEST FL, 33040

CERTIFICATE OF COMPETENCY

MONROE COUNTY  
THIS IS TO CERTIFY THAT  
TOPPINO, FRANK P.  
QUALIFIES AS A  
GENERAL CONTRACTOR  
THIS CERTIFICATE EXPIRES ON  
10/31/07

UNLESS REVOKED  
ACCORDING TO LAW

*Joseph Cackali*  
BUILDING OFFICIAL